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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,851	09/22/2003	John Eugene Merkley JR.	16342D1-US	1381

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DEERE & COMPANY  
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EXAMINER
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LIVERSEDGE, JENNIFER L

ART UNIT	PAPER NUMBER
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3692

MAIL DATE	DELIVERY MODE
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04/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,851	<b>Applicant(s)</b> MERKLEY ET AL.	
	<b>Examiner</b> JENNIFER LIVERSEDGE	<b>Art Unit</b> 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/3/2008</u>                                                 | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is responsive to Applicant's amendment and request for reconsideration of application 10/667,851 filed on January 27, 2009.

The amendment contains original claims: 2-10, 12-20, 22-24 and 26.

The amendment contains previously presented claims: 25 and 27.

The amendment contains amended claims: 1, 11 and 21.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is nothing in the claim language which provides for one to understand how the selection of incentive programs based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs directly relates to limiting the incentive programs to certain providers with superior quality or customer satisfaction.

### ***Claim Objections***

Claim 21 is objected to because of the following informalities: the preamble claims a system, as supported by the body of the claim. However, the preamble ends with "the system comprising the steps of". It is assumed this is a grammatical error and the inclusion of the reference to steps was inadvertent. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 7-9, 11-15, 17-19, 21-23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pub No. 2001/0047307 A1 to Bennett et al. (further referred to as Bennett), in view of US Pub No. 2003/0163401 A1 to Dines et

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al. (further referred to as Dines) and further in view of Marketing Research 7<sup>th</sup> ed. by Aaker, Kumar and Day (further referred to as Aaker).

Regarding claims 1-2, 4-5, 7-9, 11-12, 14-15, 17-19, 21-23 and 25, Bennett discloses a method and system of facilitating an incentive program via an electronic data processing system(pages 1-15), comprising the steps of:

Establishing a library as a comprehensive list of available incentive programs, the library stored in a data storage device associated with the data processing system (page 4, paragraphs 55-58; page 13, paragraph 137 and 143; page 14, paragraphs 145-154);

Selecting the available incentive programs from the library of incentive programs through the discretion of a particular retailer servicing a particular consumer (page 13, paragraphs 137 and 143; page 14, paragraphs 154);

Searching the library or its selected, available incentive programs to select a tailored list of candidate incentive programs from the library of available incentive programs (page 5, paragraph 66; page 6, paragraph 75-76; page 13, paragraphs 137 and 143; page 14, paragraphs 145-155);

Making information accessible on the available candidate incentive programs in the tailored list to the particular producer via an interface (page 4, paragraphs 55-58; page 5, paragraph 66; page 6, paragraph 75-76; page 12, paragraph 131; page 13, paragraphs 137 and 143; page 14, paragraphs 145-155);

Supporting selection of a preferential one of the available candidate incentive programs to the particular producer via an interface (page 13, paragraphs 137 and 143; page 14, paragraphs 146, 152-155); and

Transferring incentive program data to a financial screening process via electronic communications [intended use - to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing of the products] (page 2, paragraphs 17-18; page 3, paragraphs 40-43; page 4, paragraphs 55-57; page 8, paragraphs 88 and 95; page 10, paragraph 109; page 11, paragraph 124).

Bennett does not disclose receiving crop planning or background data of a particular producer and wherein the crop planning data is sent along with the incentive program to a financial screening process. However, Bennett discloses where informational data associated with the transaction may be sent with the incentive program data for financial screen (page 12, paragraph 127) and wherein financial is obtained based on the nature of the transaction (page 3, paragraphs 40-43) where a consumer can select products to be considered in the analysis of financial options. Dines discloses the offering of incentives and loans for agricultural related transactions (pages 1-5). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the incentive offering and financial screening as disclosed by Bennett to adapt the agricultural incentive offering and financial screening as disclosed by Dines. The motivation would be that a database of incentives can be developed to include incentives related to any product or service, and the same process steps of

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reviewing the database review for identifying a preferred incentive as disclosed by Bennett and Dines applies to any types of goods or services.

Neither Bennett nor Dines disclose selecting incentive programs based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs [intended use – to limit the incentive programs to certain providers with superior quality or customer satisfaction]. However, Aaker discloses selecting marketing programs based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs (pages 689-693). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the providing of incentives and financial screening for various products as disclosed by the combination of Bennett and Dines to adapt the use of marketing techniques such as identifying a geographic area of interest, historic sales and supplier relationships as disclosed by Aaker. The motivation would be that Aaker describes basic marketing principles which are employed in various areas of business. Bennett discloses filtering loan offerings based on lender criteria and it would be obvious to include as lender criteria basic business principals such as where a lender intends to do business, data such as previous sales history with an individual or organization, and the relationships where have been established with individuals and organizations. This is part of basic business practice and it would be obvious to incorporate such parameters into the filtering as disclosed by Bennett.

Regarding claims 3, 13 and 26 Bennett does not disclose where the crop planning or background data comprises one or more of [the list as provided in the claim language]. However, Dines discloses where the crop planning or background data comprises one or more of [the list as provided in the claim language] (pages 1-5). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the information gathering for conducting a transaction as disclosed by Bennett to adapt the gathering of specific agricultural data as disclosed by Dines. The motivation would be to collect data relative to the transaction. While Bennett gathers data related to a product or service to be purchased as well as the individual desiring to make the purchase, the system would need to gather agricultural related data for offering incentives in the agricultural products and services.

Regarding claim 27, Bennett discloses returning the tailored list of the candidate incentive programs and potentially relevant incentive programs that would be applicable, but for a submitted query that fails to satisfy a minimum purchase or minimum transaction requirement (page 1, paragraphs 7-9).

Claims 6, 10, 16, 20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett, Dines and Aaker, and further in view of Official Notice.

Regarding claims 6 and 16, neither Bennett, Dines nor Aaker disclose translating a brand name into a generic name for comparison to program data. However,



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Examiner takes Official Notice that it is old and well known and would be obvious to one of ordinary skill in the art at the time of the invention to translate a brand name to a generic name in order to search a database of incentives related to the product.

Organizing a database by generic name rather than brand name offers a broader search mechanism, whereby products are identified by generic name rather than brand name. For example, if a system user were looking for incentives on facial tissue, the user would return more "hits" on incentives if the search were conducted on facial tissue rather than on Kleenex. If a user searched for incentives on Kleenex, then only returns for the brand name would be returned. However, if the user searched for incentives on facial tissue, then returns for Kleenex brand, Puffs brand, Angel soft brand, as well as store brands and/or lesser well known brands, etc.

Regarding claims 10 and 20, neither Bennett, Dines nor Aaker disclose formatting data to be interpretable by a financial application. However, Examiner takes Official Notice that it is old and well known and would be obvious to one of ordinary skill in the art at the time of the invention to format data to be interpretable by a financial application. Data sharing requires that data be in a format which provides for the data to be transferred and processed, otherwise the process of data transfer would be ineffective. Bennett discloses where data is shared amongst parties of a transaction, ranging from a buyer to a seller to parties providing financing, and where data is passed back and forth between each of these parties. Therefore, the data must be in a format that enables a buyer to enter personal data, a seller to offer goods for sale, a financier

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to offer incentives and financing packages and wherein each of the parties is able to communicate through sharing data in a format which enables that communication.

Regarding claim 24, neither Bennett, Dines nor Aaker specifically disclose providing system access after receiving an identifier and password from parties accessing the system. However, Examiner takes Official Notice that it is old and well known and would be obvious to one of ordinary skill in the art to incorporate the use of party identifiers and passwords with the online incentive and financing as disclosed by Bennett. Sensitive personal data related to individuals and their potential purchases is stored in the Bennett system. The users of the system range from buyers to sellers to financiers, where each has access to the system, and it is old and well known and would be obvious to one of ordinary skill in the art to require identifiers and passwords for granting such access in order to protect the sensitive data which has been gathered and stored by the Bennett system. Bennett discloses where each of the above mentioned parties may begin a transaction, evaluate options for purchases and associated financing, and place the transaction on hold for further consideration, returning later to complete the transaction. It would be obvious to require identifiers and passwords in order to establish the profile and store transaction data, in order to return to the transaction at a later point in time.

***Response to Arguments***

Applicant's arguments, filed January 27, 2009, with respect to the 101 rejection have been fully considered and are persuasive. The 101 rejection has been withdrawn.

Applicant's arguments filed January 27, 2009, with respect to the prior art of record have been fully considered but they are not persuasive.

Applicant argues with respect to newly added claim material that Aaker fails to disclose selecting an incentive program based on retailer preferences comprising a supplier relationship to limit the incentive programs to certain providers with superior quality or customer satisfaction. However, examiner notes that Aaker discloses the selection of an incentive program based on retailer preferences comprising a supplier relationship as noted in the rejection above. With regards to the claim language "to limit the incentive programs to certain providers with superior quality or customer satisfaction" is merely intended use and is not positively recited as a method step, and therefore does not carry weight as a limitation. Additionally regarding this limitation, even if the language were positively recited and not intended use, there is nothing in the claim language which provides for one to understand how the selection of incentive programs based on retailer preferences comprising a geographic region that the retailer services, historic sales, and a supplier relationship with one or more suppliers of the incentive programs directly relates to limiting the incentive programs to certain providers with superior quality or customer satisfaction.

Applicant further argues that the references fail to "disclose transferring crop planning data and incentive program data on the preferential program to a financial

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screening process "to reduce or eliminate duplicative reentry of the background data applicable to the incentive programs and the financial screening process associated with financing of the products". As noted in the rejection above, the language presented herein again is merely intended use and is not positively recited as a method step, and therefore does not carry weight as a limitation. The references, as detailed above, disclose transferring of data through the system to a screening process.

Examiner also notes that while the references may not specifically address the intended use language and are not required to do so, it is old and well known to transfer data between system components such that efficiencies and reduction of errors can be achieved.

Examiner also makes a general note that the claim language related to the particulars of crop data and agricultural producers represents non-functional descriptive language. Whether a library stored in a database consists of incentive programs related to agricultural input products or any other products or services, the use of a database to store incentive programs is disclosed in the art. Similarly, the receiving of data representative of background information is just that regardless of whether the data is crop data or other data and whether the background data is related to one producer or manufacturer or another. The method steps of establishing, selecting, receiving, etc. remain the same regardless of the particulars of the data.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

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hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jennifer Liversedge whose telephone number is 571-272-3167. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached at 571-272-6702. The fax number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jennifer Liversedge/  
Examiner, Art Unit 3692

/Kambiz Abdi/  
Supervisory Patent Examiner, Art Unit 3692